

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
THE REPUBLIC OF KAZAKHSTAN, : Docket #15cv1900
Plaintiff, :
- against - : New York, New York
DOES 1-100, : October 28, 2015
Defendants. :
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PROCEEDINGS BEFORE
THE HONORABLE HENRY PITMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: CURTIS, MALLET-PREVOST, COLT &
MOSLE LLP
BY: JACQUES SEMMELMAN, ESQ.
MICHAEL MOSCATO, ESQ.
101 Park Avenue South, 35th Floor
New York, New York 10178
For Non-Party Respublika: DAVIS WRIGHT TREMAINE LLP
BY: JAMES ROSENFELD, ESQ.
1633 Broadway
New York, New York 10019

Transcription Service: Carole Ludwig, *Transcription Services*
141 East Third Street #3E
New York, New York 10009
Phone: (212) 420-0771
Fax: (212) 420-6007

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: The Republic of Kazakhstan against
Does 1 through 100. Counsel, please state your name for
the record.

MR. JACQUES SEMMELMAN: For the plaintiff
Jacques Semmelman, Curtis Mallet-Prevost & Mosle, and with
me is my partner Michael Moscato.

MR. JAMES ROSENFELD: Good morning, Your Honor.
For defendants, for non-party Respublika, Jim Rosenfeld,
Davis Wright Tremaine.

THE COURT: Okay. All right, we are here I
guess as chapter 2 of the discovery conference that we
started on September 18 of this year. There have been a
number of very recent developments in the case. I take it
counsel are aware of Judge Ramos' decision of last evening.

MR. ROSENFELD: Yes, Your Honor.

MR. SEMMELMAN: Yes, Your Honor.

THE COURT: And I also got a letter yesterday,
it was actually on the - it was filed yesterday, I just saw
it this morning - a letter from Mr. Semmelman dated October
27, 2015. Have you seen that, Mr. Rosenfeld?

MR. ROSENFELD: I have, Your Honor.

THE COURT: Okay. All right, well, let's start
I guess with the question of the deposition which I think
raises a number of thorny issues. All right, and plaintiff

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2 is seeking - excuse me - Respublika is seeking essentially
3 a protective order directing that either the deposition be
4 adjourned or that it take place on written questions or
5 maybe there's some other forms of relief Mr. Rosenfeld
6 thinks are appropriate. Why I don't hear from you first,
7 Mr. Rosenfeld, then I'll hear from Mr. Semmelman.

8 MR. ROSENFELD: Sure, Your Honor. Your Honor's
9 correct --

10 THE COURT: You can remain seated by the way.
11 Everybody can remain seated, it's okay.

12 MR. ROSENFELD: Thanks.

13 THE COURT: Go ahead.

14 MR. ROSENFELD: You're right, Your Honor, we
15 resolved - we were last time to resolve the procedural
16 objections, and you directed us back here on the
17 substantive issues to see whether, first, we could resolve
18 on our own and if not whether we could come back to the
19 Court and try to resolve any of the issues before going off
20 to London for this deposition. I think the order yesterday
21 on our motion to clarify is significant and affects the
22 issues here because it's based on the First Amendment.

23 The Court granted our motion for clarification,
24 holding that the injunction didn't apply to Respublika
25 because, as it's written, applying against Respublika would

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2 be a prior restraint, and it relied on the key First
3 Amendment cases of Smith v. Daily Mail and Bartnicki v.
4 Vopper, which together essentially say that the First
5 Amendment grants persons a near absolute right to publish
6 truthful information about matters of public interest, and
7 Bartnicki says, even if you are legally provided with
8 materials that someone else illegally intercepted, you're
9 still entitled, the media is still entitled to publish
10 those materials.

11 And here we're seeking, you're correct, we're
12 seeking in the - we sort of proposed a few different
13 things. One, our first choice, a stay, not a motion to
14 quash, but a motion to stay until other discovery's taken,
15 and the Court has granted them already, permission to go
16 ahead with certain other discovery, that establishes basis
17 for taking discovery from our media client

18 THE COURT: Let me ask you one question which
19 neither side really addressed in a joint letter I got dated
20 October 26. What law applies to Respublika's claim of the
21 reporter's privilege?

22 MR. ROSENFELD: U.S. law, Second Circuit law --

23 THE COURT: Why?

24 MR. ROSENFELD: First Amendment argument --

25 THE COURT: Why?

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MR. ROSENFELD: Because there are --

THE COURT: My understanding is, I looked on the internet today, and my understanding is Respublika's website publishes in a foreign language.

MR. ROSENFELD: Respublika publishes in English as well.

THE COURT: I didn't see it on the internet.

MR. ROSENFELD: And they direct - and they have a large U.S. audience --

THE COURT: Where are their - do they have offices?

MR. ROSENFELD: They originally had offices within Kazakhstan and they're now in exile in Europe, in locations that they wish not to disclose in Europe.

THE COURT: Well --

MR. ROSENFELD: Publishing only on the internet.

THE COURT: I mean let me ask you a question. I genuinely don't know what the answer is, and nobody has addressed this in their papers. If you have a reporter in country X who gathers information in country X, publishes a story in country X, publishes it in hard copy in country X, and the publication's periodical also has an internet version that they put up, and let's assume that the story, the content of the story is primarily of interest to the

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2 citizens of country X - it would have very little interest
3 to citizens or residents of other countries - is that
4 reporter in that hypothetical entitled to First Amendment -
5 is he entitled to the protection that's afforded to
6 reporter's sources or to reporters with respect to the
7 sources, is he entitled to the protection that reporters
8 get with respect to their sources that's afforded in the
9 United States? Has the internet globalized the First
10 Amendment?

11 MR. ROSENFELD: Right. On that set of facts,
12 and I assume another part of the hypothetical is that the
13 lawsuit and claims are brought in the U.S. under U.S. law.

14 THE COURT: I haven't talked about a lawsuit
15 yet.

16 MR. ROSENFELD: Okay, so I'm not certain, and I
17 think that our facts are different than that. I think
18 there are greater U.S. connections here because --

19 THE COURT: Well, we agree though that the
20 question of applicable law is something that, the answer I
21 didn't think is self-evident, do we agree on that much?

22 MR. ROSENFELD: I think the answer - I think the
23 answer is clear here because of the U.S. connections, and
24 that is that our servers are in the U.S., the injunction
25 was obtained in the U.S. and brought to those U.S. servers.

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So we're publishing here on service providers based in the United States and on Facebook which is based in the United States.

THE COURT: And then published, but you publish elsewhere also, do you not?

MR. ROSENFELD: We publish on the internet, so that's --

THE COURT: They publish worldwide.

MR. ROSENFELD: Anyone who has access to the internet can see the website, but the service providers are in the U.S. And a substantial part of Respublika's audience is in the U.S. because there's an exiled community here and also because there have been, there's been State Department and congressional attention to the human rights violations of the Kazakhstan regime. So it is --

THE COURT: I'm not sure that affects - what the State Department does I'm not sure affects the choice of law issue. I mean usually with respect to questions of privilege, I mean if you're talking about the attorney-client privilege or the priest-penitent privilege or similar privileges, ordinarily you look to the law of the jurisdiction in which the relationship was formed. I'm not sure how this plays out with respect to reporter's claims of privilege in connection with stories published on the

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2 internet. I genuinely don't know what the answer is.

3 MR. ROSENFELD: I think the only connection here
4 was that the publications at issue were published abroad
5 and are available anywhere in the world. Because they're
6 on the internet, I would have a much tougher case to make.
7 I think the U.S. connections here, of the publication on
8 the internet, and the direction of the content in part to a
9 U.S. audience establishes the necessary basis to apply the
10 First Amendment to these claims which are brought here in
11 this court.

12 THE COURT: All right, I interrupted you. You
13 started talking about the relief sought, and you said the
14 first thing was a stay of the deposition. What's the
15 second alternative?

16 MR. ROSENFELD: The second is, you know, we are
17 basing this on the - we're basing our reporter's privilege
18 arguments on Second Circuit law and the standard appears on
19 page 6 of the joint letter. I mean the test is that --

20 THE COURT: Among other things they've got to
21 exhaust other sources first?

22 MR. ROSENFELD: They've got to exhaust other
23 sources first, and there has to be a clear and specific
24 showing that the information is highly material and
25 relevant and necessary or critical to the maintenance of

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2 the claim.

3 So what we're basically arguing is based on -
4 we're arguing for a stay based on the inherent authority of
5 the court, based on Rule 26(c) and 45(d), and based on the
6 First Amendment overlay here, this obligation to go to
7 other services, to go to other sources first, that a stay
8 should apply across the board. If that - sort of second to
9 your argument is, if not a stay, then in order to avoid the
10 burden of going to London and for all the other reasons I
11 just said, there should be, first, a written deposition
12 under Rule 31 or - it didn't say this in the letter but it
13 occurs to me now so I'll say it because it's effectively
14 the same thing - an affidavit from our client. The client
15 would be willing to sign an affidavit saying it had nothing
16 to do with and has no knowledge of the alleged hacking.
17 And perhaps there are other things we could put in the
18 affidavit that would satisfy plaintiffs and stay the
19 discovery until they've taken other discovery.

20 And the sort of third tier that I proposed is,
21 and if Your Honor does not stay, grant a stay, is that we
22 think the subject matter in the deposition notice is too
23 broad and would argue for narrowing, which we can go
24 through.

25 THE COURT: All right, and just one other

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2 question. My understanding is - I'm looking at the
3 30(b)(6) notice to Respublika. My understanding is number
4 4 is withdrawn.

5 MR. SEMMELMAN: That's correct, Your Honor.

6 THE COURT: All right. And my understanding
7 also is is that Mr. Ketebaev, Muratbek Ketebaev going to be
8 deposed pursuant to Judge Ramos' decision on Monday.

9 MR. SEMMELMAN: That's correct, he will be
10 deposed on a list of topics that Judge Ramos has approved,
11 and that is a Hague Convention proceeding, and as the Court
12 may be aware, that could take many, many months before any
13 deposition actually occurs. But it's going to be formally
14 ordered by the Court; it was informally ordered by the
15 court at the conference on Monday.

16 THE COURT: Is there anything else you want to
17 tell me, Mr. Rosenfeld, before I hear from Mr. Semmelman?

18 MR. ROSENFELD: Well, Your Honor, I'm happy to
19 go through the topics and the eight, now seven topics, if
20 Your Honor would like, or if Your Honor would prefer, I'm
21 happy to have counsel go ahead, and then we can go back and
22 forth on the topics.

23 THE COURT: Yeah, let me hear I guess from Mr.
24 Semmelman first on whether or not the deposition should go
25 forward or whether there should be some, whether it should

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2 be deferred or whether it should use written questions or
3 something else. Mr. Semmelman - you can remain seated
4 also, by the way. I presume it's gonna be you and not Mr.
5 Moscato, am I correct?

6 MR. SEMMELMAN: Well, if I need help, I will
7 turn to Mr. Moscato.

8 THE COURT: All right.

9 MR. SEMMELMAN: Thank you, Your Honor.

10 THE COURT: Fair enough.

11 MR. SEMMELMAN: Thank you. Let me start by
12 saying that with respect to the order that was issued by
13 Judge Ramos yesterday afternoon, while Mr. Rosenfeld has
14 correctly described the substance of the order, I would
15 like to point out that the Court specifically said the
16 foregoing is without prejudice to plaintiff to reapply for
17 the imposition of an injunction against the use of the
18 stolen materials by Respublika should it obtain sufficient
19 evidence to support such an order.

20 So we're talking now about a proceeding to try to
21 obtain such evidence --

22 THE COURT: How do you get that? Isn't that
23 pre-complaint discovery which is ordinarily precluded?

24 MR. SEMMELMAN: Well, Respublika has appeared in
25 this case in some capacity --

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THE COURT: Right. No, but I mean we've got a complaint. Rule 26 tells us that discovery has to be relevant to a claim or defense and non-privileged. And there's a wealth of authority, including Iqbal and a number of other cases, that say before you can get discovery against a party, you've got to state a claim against that party. You have not stated a claim against Respublika, agreed?

MR. SEMMELMAN: We have not asserted a claim against Res --

THE COURT: You haven't stated a claim against them. So I think if you get discovery from them as a non-party, you get discovery with respect to the claims that are currently asserted, but I don't know how, I don't know what justifies discovery to see if you have a claim against them.

MR. SEMMELMAN: Well, this is certainly a unique situation because, as the Court knows very well, they came into the case, they asserted themselves in the case, they sought relief from the court, from the district court. We cross-moved for discovery. The district court delegated the discovery aspect of this to Your Honor, and the district court in yesterday's opinion specifically put in footnote 2 on page 3 that we cross-move for expedited

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2 discovery. The cross-motion has been referred to
3 Magistrate Judge Henry Pitman for resolution. And then the
4 court goes on to say that if we get evidence, we can come
5 back.

6 So the district court seems to have certainly
7 left open our ability to continue to pursue the ongoing
8 efforts to take discovery. The district court was
9 certainly aware of the proceedings that were going on
10 before Your Honor at least in some fashion. The district
11 court knew that Your Honor at the last session in September
12 had ruled that we can go ahead and take a deposition. The
13 district court chose not to interfere with that or in any
14 way reverse that or vacate that. District court could've
15 said, well, the forecloses any discovery.

16 THE COURT: My question I guess is more as to
17 scope than whether you get discovery. I don't think
18 there's suggest dispute that you could depose Respublika
19 here or take discovery of Respublika as a non-party with
20 respect to the claims you've asserted. But how do you get
21 - how do you get discovery to find out whether you have a
22 claim against them if you haven't stated a claim against
23 them?

24 MR. SEMMELMAN: It's --

25 THE COURT: I mean that seems to be what, you

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2 know, Judge Lynch discussed it when he was a district judge
3 in a case called Podany against Stephens, 350 F. Supp. 2d
4 375, and it's also discussed in a decision I issued in 2010
5 called Bridgewater against Taylor, 745 F. Supp. 2d 355.

6 One of the --

7 MR. SEMMELMAN: Well, I know --

8 THE COURT: Go ahead.

9 MR. SEMMELMAN: May I respond? Thank you.

10 We're not seeking to take discovery to find out if we have
11 a claim against them. We are seeking to take discovery to
12 see if they are bound by the injunction. And Judge Ramos
13 in yesterday's opinion on page 3 said that we have to prove
14 that, quote, "Respublika itself violated the CFAA or was
15 complicit in the alleged hacking." That's the standard
16 we're gonna have to meet, and the discovery we propose to
17 take will relate to that issue.

18 Secondly, the discovery --

19 THE COURT: I'm not sure you're entitled to that
20 though. If you don't have a claim against - I'm really
21 hard-pressed to understand how you can take discovery of
22 Respublika to see if you have a claim against them when you
23 haven't stated a claim against them.

24 MR. SEMMELMAN: But we're seeking to take
25 discovery from Respublika not to ascertain whether we have

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2 a claim against them in the sense of a cause of action to
3 be included in the complaint but to see if they are bound
4 by the injunction. They are --

5 THE COURT: If they're bound by the injunction,
6 do you have a claim against them? I'm really a little
7 confused here. If they're bound by the injunction, you
8 wouldn't sue them? You wouldn't assert a claim against
9 them?

10 MR. SEMMELMAN: I'm not saying we would or we
11 wouldn't. I'm saying right now, right now the issue that
12 we are pursuing is to get discovery to see if they are
13 bound by the injunction, and that was what motivated us in
14 our framing of the eight topics in our Rule 30(b)(6)
15 notice. I'm not predicting what the discovery will show.
16 I'm not predicting what we will do once we get the
17 discovery. I'm not at that point. I'm at the point where
18 pursuant to what has occurred so far in the district court
19 and in Your Honor's court, we're seeking to follow up on
20 our cross-motion, which Your Honor I believe granted last
21 time we were here, to take a deposition of Respublika with
22 regard to the issue of whether or not they are bound by the
23 injunction.

24 THE COURT: Yeah, I know but the geography has
25 changed given Judge Ramos' decision last evening.

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MR. ROSENFELD: May I respond to the question?

THE COURT: Well, let me finish with Mr.

Semmelman.

MR. ROSENFELD: Sure.

THE COURT: Mr. Semmelman, let me shift gears a little bit. Why would it not make sense to proceed by way of written questions in the first instance? I mean it's clear to me that there are going to be a lot of assertions of privilege here which I'm really loathe to address without briefing on the choice of law issue and without knowing what the specific questions are and what the factual record is.

I have a strong sense that if you go over to London and take the deposition, it may well be a very short deposition, and I think there's going to wind up necessarily being motion practice afterwards. Why would it not make sense to proceed by way of written questions in the first instance without prejudice to your right to subsequently seek a testimonial deposition?

MR. SEMMELMAN: Because it's just not practical to try and formulate a list of written questions that will capture the various possible permutations that could arise given what the answers may or may not be. It's a very impractical way --

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THE COURT: That's always the case. It's not a perfect substitute for an oral deposition, but the inability to ask follow-up questions is inherent in a written, in a deposition on written questions. But that doesn't mean it's never an appropriate alternative.

MR. SEMMELMAN: But it has been an appropriate alternative in fairly unusual circumstances, for example, where somebody wants to depose a CEO and the CEO submits an affidavit saying I really don't have anything to add. Other people have been deposed that have answered questions. And we cited a case that Your Honor decided in which Your Honor said, okay, we'll depose the CEO through written questions. This is a different category. This is a 30(b)(6). They don't have to designate their CEO. They don't have to --

THE COURT: I understand that, but we know, I think we know that there are going to be a lot of assertions of privilege.

MR. SEMMELMAN: I would anticipate that, of course. They've said they're gonna do that. In fact, they predicted, and it's kind of interesting that they predicted this on page 8 of the joint letter that the answers to any of our questions will either be we don't know anything, we only know what everyone else knows, or privilege. Now, how

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2 they know ahead of time what the answers will be is beyond
3 me, but they've said that. And I'm puzzled that they
4 should be entitled to just predict that whatever the
5 question is those three answers will always be the answer.

6 Normally, you sit down, you take the deposition,
7 you ask questions, there are objections, and a record is
8 made. There're detailed questions, not just broad
9 questions, detailed specific questions, there's back and
10 forth, there's colloquy. There are directions not to
11 answer. There are direction to answer with a reservation
12 of rights. It's a dynamic process, and we might sit there
13 for a few hours, but there will be a developed record that
14 we can then bring back. With a written deposition, I
15 anticipate is going to be close to meaningless because how
16 many questions can we formulate, ten, twenty, thirty?
17 We're not gonna formulate several hours' worth of questions
18 as we would at a deposition.

19 We ask d them where they wanted the deposition;
20 they said London; we said fine. If they want it somewhere
21 else, we can change the venue. We're not holding them to
22 any particular venue. But we submit, Your Honor, that it
23 should be a sit-down deposition in a location convenient
24 for them. We'll pick a date that works for everybody else.
25 There's nothing out of the ordinary in having to do that.

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One more comment, Your Honor. In terms of the privilege issue, they've put the horse before the cart. They're asserting privilege, they say, well, we're gonna have to show that we've exhausted other avenues, that we meet the burden for piercing privilege. We're not yet at the point where we're trying to pierce privilege. We will perhaps get to that point, but --

THE COURT: Look, I mean some deposition in some situations you know that there's going to be a substantial privilege dispute. I mean, for example, if someone is trying to depose adverse counsel or even in-house counsel for a corporation in a case where a corporation is a defendant, you know ahead of time there are going to be a lot of privilege issues. So to suggest that they're putting the cart before the horse I think sort of ignores something that I think is fairly obvious here. But go ahead.

MR. SEMMELMAN: That's one observation. Second observation, they haven't asserted journalistic privilege with regard to each of our topics. They have with regard to several, but not with regard to all of them. They've asserted other privileges, they've asserted attorney-client privilege which does not foreclose questions that surround the issues such as who was the attorney, when was the

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2 attorney retained. Follow-up questions relating to that.
3 While they've asserted journalistic privilege with regard
4 to a number of topics, it's not universal.

5 And from our point of view there is enough to
6 make it worth our while to go to London, sit down for
7 several hours, take the deposition, make a detailed record.
8 We're the ones going to London. They suggested London.
9 We're the ones going there. Whatever burden is associated
10 with London falls on our shoulders. We're gonna be there,
11 we're gonna take the deposition, and we'll see what the
12 record show.

13 I would respectfully suggest, Your Honor, that to
14 foreclose the deposition on the ground that, as Respublika
15 is suggesting, really isn't necessary and isn't warranted.
16 There's nothing so extraordinary about this deposition that
17 extraordinary measures need to be taken. It's much more
18 routine than they're making it sound. We should take the
19 deposition and come back, which we probably will have to
20 do, but we'll come back but with a fully developed record
21 instead of the kind of spotty, incomplete record that would
22 be adduced using a written deposition. It's just like an
23 interrogatory to a party, I think we all know that with
24 rare exception interrogatories to parties tend not to be
25 particularly fruitful.

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THE COURT: Let me ask you one other question about two of the particular topics here. Do you have the 30(b)(6) notice handy?

MR. SEMMELMAN: I do.

THE COURT: Okay. Topics - no, I've got it. I've got it in front of me. Do you have it also, Mr. Rosenfeld?

MR. ROSENFELD: I do, Your Honor.

THE COURT: Numbers 5 and 6, how do they relate to the complaint?

MR. SEMMELMAN: These relate to the preliminary injunction.

THE COURT: Okay, but how do they relate to the complaint?

MR. SEMMELMAN: Well, they would relate to the complaint only to the extent that they show a consciousness of guilt and a recognition that they were bound by the injunction and that they were trying to conceal their violation of the injunction.

THE COURT: No, I mean there you bump up against the cases that say you don't get discovery to find out if you have a claim until you state a claim.

MR. SEMMELMAN: But that's why I --

THE COURT: I don't see how you get around that

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principle.

MR. SEMMELMAN: Because, as I noted earlier, we're not trying to take this discovery to see if we have a cause of action against Respublika. We're trying to take this discovery to see if they are bound by the injunction. That's the only reason we're here, that's the only reason we submitted this 30(b)(6) notice to see if they're bound by the injunction.

And interestingly, when Judge Ramos a couple of days ago parsed through the topics from Mr. Ketebaev, he left standing a topic that bears on this, and let me first say that in our Ketebaev motion, and that was The Hague Convention motion, we filed that motion before we became aware of this backdating and reposting. We filed a motion in May; we became aware of the backdating in June. And so our motion to take Mr. Ketebaev's deposition did not include any reference to backdating the post. However, in topic 17 of that revised list of topics which Judge Ramos as approved, topic 17 says, "The identity of the persons who took down two Facebook posts" --

THE COURT: I'm sorry, which --

MR. SEMMELMAN: Okay, I'm going too quickly, Your Honor.

THE COURT: I'm looking at - maybe I'm looking

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at the wrong document. I'm looking at exhibit B to your letter of yesterday. Is that the wrong --

MR. SEMMELMAN: It's an exhibit. I will - yes, it's exhibit B. It is exhibit B to yesterday's letter.

THE COURT: My --

MR. SEMMELMAN: Oh, I'm sorry --

THE COURT: My topic 17 says, "Mr. Ketebaev's" -
-

MR. SEMMELMAN: You have the - my apologies - you have the earlier version that was not revised. Topic 26 on page 7.

THE COURT: Topic 26 on page 7. All right, the identity of --

MR. SEMMELMAN: That has been approved by Judge Ramos for the deposition of Mr. Ketebaev. And that one says, "The identity of the persons who took down two Facebook posts containing stolen materials from the Respublika Facebook page around March 17/18, 2015."

Now, Judge Ramos apparently is prepared to allow questioning on information relating to the takedown of posts containing stolen material. And for the reasons I've indicated, we did not bring before him the broader takedown and backdating that we learned about later, but there's nothing that has occurred before Judge Ramos that suggests

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2 that Judge Ramos would preclude a questioning on those
3 topics. It relates to the use of the stolen materials, the
4 takedown of the stolen materials, the reposting of the
5 stolen materials. It's all about stolen materials. So it
6 has a relevance to the case at large as well as to the
7 injunction.

8 If it would help, Your Honor, I can hand up a
9 redline of the --

10 THE COURT: I'm looking at a sentence from - I'm
11 still very troubled by this. I'm looking at a sentence
12 from a decision that Judge Lynch issued in 2004. This is
13 the Podany case which I referenced earlier. Judge Lynch
14 wrote, "Except in certain circumstances, such as to
15 perpetuate vital testimony, discovery is authorized solely
16 for parties to develop the facts in a lawsuit in which a
17 plaintiff has stated a legally cognizable claim, not in
18 order to permit a plaintiff to find out whether he has such
19 a claim and still less to salvage a lawsuit that has
20 already been dismissed for failure to state a claim."

21 I mean what you want to do here, to the extent at
22 least 5, in topics 5 and 6, I don't how you can - I'm not
23 sure how you do that without violating the principle that
24 you've got to state a claim before you get discovery to
25 establish a claim.

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MR. SEMMELMAN: Your Honor, I don't know that

I've read the case Your Honor was reading from. I don't

recall it was cited by either party here, so I'm not

familiar with it. But I don't - I'm not aware that that

was a case having to do with whether somebody is bound by

an injunction because they're in active concert or

participation with a wrongdoer. I don't know the answer to

that, Your Honor; I'm just observe that it might be a very

different circumstance.

THE COURT: All right. Anything else you want

to tell me, Mr. Semmelman?

MR. SEMMELMAN: No, I --

THE COURT: What're your thoughts on what law

applies here with respect to the reporter's privilege?

MR. SEMMELMAN: Well, that's an interesting

question that Your Honor raised. The parties have been

proceeding as if Second Circuit law applies without

apparently disputing that. But now that Your Honor has

raised the issue, I think it's worth further research and

analysis. We were proceeding on the basis --

THE COURT: I think everyone would have just

assumed this is a matter of domestic U.S. law but hadn't

really thought about it.

MR. SEMMELMAN: We had reached the conclusion

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2 without seriously researching it because we're here in
3 court based fundamentally on violation of a U.S. statute,
4 there's a U.S. preliminary injunction, and it was our
5 assumption, for lack of a better word, that there's no
6 reason to disagree with Respublika that Second Circuit law
7 controls here. But now that Your Honor has raised the
8 issue, all I can say is we will go back and take a closer
9 look at it.

10 THE COURT: You want to respond, Mr. Rosenfeld?

11 MR. ROSENFELD: You asked earlier how does
12 Kazakhstan establish the basis of a claim against
13 Respublika without discovery, and I agree that the, they're
14 not entitled to take discovery, and Your Honor cited a
15 couple of cases, Podany and Bridgewater --

16 THE COURT: Well, they're entitled to take
17 discovery of you as a non-party.

18 MR. ROSENFELD: Right. But they're not allowed
19 to take discovery of us as a party in order to establish
20 the claim. And the answer of how they can establish --

21 THE COURT: Well, they're entitled to take
22 discovery of you as a non-party with respect to the claims
23 asserted in the complaint.

24 MR. ROSENFELD: Correct.

25 THE COURT: I don't think there's any dispute on

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that.

MR. ROSENFELD: Correct.

THE COURT: Okay, go ahead.

MR. ROSENFELD: So how can they establish a claim against us? They can take the discovery they've already been permitted to take. They can take other discovery if there are other depositions to take. We haven't asserted any objection to the - we don't have a stake one way or the other in the discovery they've sought to take via The Hague. And they can do it that way, and they're obligated to do it that way in order to establish a basis for seeking the discovery against us under the law that we've cited.

As Mr. Semmelman noted, the Court, you know --

THE COURT: What about Mr. Semmelman's point, which I think has some traction, that a deposition on written questions is really a poor substitute for a viva voce deposition. I mean you can't ask follow-up questions. I think we all know the answers to depositions on written questions are usually crafted by lawyers not by the witness. And usually the answers are not terribly illuminating. I mean what about his point that written deposition deposition on written questions is just not a good substitute for an oral deposition?

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MR. ROSENFELD: A Rule 31 deposition isn't the same thing as a Rule 30 deposition I agree.

THE COURT: Yeah.

MR. ROSENFELD: The reason it's- and to be clear, we've suggested that the Rule 31, the written deposition take place here without prejudice if they can establish a basis to go forward and take a deposition later. We don't think they have this basis now. So it's a gate that they have to get by, it's a way to get some information.

THE COURT: Yeah, ordinarily you don't need to show good cause before you take a deposition. I mean --

MR. ROSENFELD: No, we --

THE COURT: So in the ordinary - I mean certainly in the vast majority of cases oral depositions take place without any kind of required showing ahead of time.

MR. ROSENFELD: Correct. Correct, and the difference here, Mr. Semmelman said this case is routine. I would respectfully disagree with that. I think it's anything but routine. I think we have a foreign government seeking to take the deposition of the lead media critic of that government. There's a history detailed by human rights groups and congressional hearings of oppression, not

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2 just of the press but of this particular entity. So
3 there's a real reason to fear harassment, persecution, etc.
4 In addition - you know, which is exactly what Rule 26
5 allows courts to intervene to avoid, and Rule 45 as well.

6 THE COURT: Well, I think the harassment that
7 Rule 26 contemplates is usually harassment at the
8 deposition, somebody asking argumentative questions or
9 asking redundant questions or asking irrelevant and
10 embarrassing questions.

11 MR. ROSENFELD: Let me focus on oppression
12 rather than harassment then. I think maybe oppression is
13 the better basis, and I think this is the classic example
14 of a case in which there's reason to think that a
15 deposition could be used in that way. In addition, we have
16 the First Amendment issues we've raised, and we have the
17 obligation under Second Circuit law to seek discovery first
18 from other sources. And, in addition, we have the
19 practical reason, and this goes to undue burden, that, as
20 Your Honor pointed out, we're going to go to London, we're
21 gonna to get into the exact privilege issues that are
22 apparent from this letter. The parties have already staked
23 out their positions, and there's lots of disagreement. And
24 it's gonna be unduly burdensome and a waste of resources to
25 go and take that deposition and come back.

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So we think there's a compromise here which is to do a written deposition first, take other discovery first, and see where that leads. And if there's a basis to take the deposition later, they have not - this doesn't prejudice their ability to do that.

I would also say one other point, we haven't taken the position, counsel referred to our statement on page 8 about, you know, the answers will either be "we don't know anything," "we know only what everyone knows," or "privileged." That specifically was said with respect to matters 1 through 4. It's not that there's nothing we would have to say in response to any questions. This deposition, which was permitted by the court on narrow grounds and is limited to the matters here, is very constrained to these topics.

And as to matters 1 through 4, which are about the hackers, the hackings - well, 4 is out of the question now - and the circumstances under which Respublika came into possession of the stolen materials, you know, our position is those are going to be fruitless because we don't know anything about any alleged hacking, we don't even know if there was a hacking or whether there was a leak. We certainly don't know, if there was a hacking, who committed it. We're willing to say that in affidavit, we

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2 will say that in response to Rule 31 questions. And,
3 therefore, if we go to London, the --

4 THE COURT: Number 3 I presume you'd assert
5 privilege?

6 MR. ROSENFELD: Number 3 gets into reporter's
7 privilege issues. You know, and it would be - number 3
8 would be okay. Again, we think the deposition should be
9 stayed for all the reasons we've said. But if the
10 deposition went forward - I want to point the Court to
11 Kazakhstan's portion of the joint letter on page 15.
12 Actually it's in their paragraph on topics 1 and 2, but I
13 think it applies to topic there also.

14 They say in the second sentence there, "These
15 areas of examination go to the very heart of the central
16 issue, whether Respublika was involved, that is, whether it
17 solicited, encouraged, planned, financed, aided, abetted,
18 or otherwise assisted the hackers and hackings." They did
19 not solicit, encourage, plan, finance, aid, abet, or
20 otherwise assist the hackers and the hackings, if there was
21 a hacking. If it went forward at all, it should be
22 narrowed to that. Our contention is if it went forward, it
23 should go forward in writing so we can say that in writing.

24 But what it shouldn't go to is stuff that is
25 beyond the bounds of that. The previous sentence talks

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2 about Respublika's knowledge of and relationship to the
3 hackers and hackings. There are other ways in which the
4 requests could be interpreted which go to relationships
5 with other sources or how we obtained these materials
6 lawfully, and we don't think, you know, we think that's
7 where you get into reporter's privilege issues. So the
8 heart of it, whether we were involved with the hacking,
9 we'll testify that we don't, but I don't think we need to
10 go to London to do that.

11 THE COURT: What about 5 and 6, do you believe 5
12 and 6 are appropriate?

13 MR. ROSENFELD: I agree with the Court that,
14 with the Court's suggestion that Kazakhstan wouldn't be
15 entitled to discovery to establish claims. This 5 and 6 is
16 too attenuated. It clearly gets into privilege issues as
17 well. But as counsel said, has said in the correspondence
18 and said again in the hearing today, what they're really
19 seeking here is to show consciousness of guilt, and that's
20 simply not a valid basis to go over there and show that
21 Respublika feels guilty, and you can see that from its
22 removing its posts.

23 So, no, I don't think these are legitimate. I
24 think they're infused with privilege issues, and they're
25 just too attenuated to be appropriate matters for

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examination on these circumstances.

THE COURT: All right. Anything else? I'm going to hear from Mr. Semmelman again. Is there anything else you want to tell me?

MR. ROSENFELD: Not at this time, Your Honor.

THE COURT: Mr. Semmelman.

MR. SEMMELMAN: I'll try to keep it short. What we just heard from Mr. Rosenfeld is a plea for an elaborate advisory ruling before the deposition takes place. And I understand that we're here to shape the contours in some sense --

THE COURT: Well, the issue of an advisory opinion goes so far. I mean it's not uncommon for judges to rule on what topics in a 30(b)(6) are in and what are out. I mean it sounds like Judge Ramos did something very analogous to that with respect to the requests for Hague Convention discovery. So having said that, go ahead.

MR. SEMMELMAN: And we certainly are not challenging the, even the wisdom or the appropriateness of going through our now seven topics and identifying which ones should be on the table and which ones perhaps should be off the table. But what Mr. Rosenfeld is arguing for is really no deposition, at least for now, either because we should have a written process to start and then we'll see

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2 where we are or we should wait I don't know how many months
3 until we take Mr. Ketebaev's deposition in Poland.

4 I submit we should keep this fairly simple. We
5 should keep it fairly simple. We should take the
6 deposition in the venue they've designated as their venue
7 of choice. We will go there. Whatever burden is
8 associated with that will rest on our shoulders. We are
9 prepared to undertake that. We'll go, we'll take the
10 deposition in their venue, and then we'll have a record,
11 we'll have a detailed record with a lot of Q&A, a lot of
12 objections not doubt, but there will be a thoroughly
13 developed record rather than trying to anticipate what the
14 questions might be, what privileges might be asserted in
15 response to which questions.

16 All I ask, Your Honor, is let us take a
17 deposition, and then we will come back with a record.

18 THE COURT: All right. All right, and, Mr.
19 Semmelman, I presume you understand the deposition
20 transcript may wind up being very thin.

21 MR. SEMMELMAN: That's a chance I'm prepared to
22 take.

23 THE COURT: And you're assuming that risk, and
24 you're not gonna come back here and make an application for
25 costs because they objected in bad faith or something like

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that?

MR. SEMMELMAN: I --

THE COURT: You know that there are going to be a lot of objections coming.

MR. SEMMELMAN: I'm aware or I've been warned that objections will be coming, and I'm prepared to take on that risk.

THE COURT: Okay.

MR. ROSENFELD: And it's our position --

THE COURT: Do you want to address - one second, let me just come back to Mr. Semmelman for a minute. You want to address 5 and 6 again? I'm still hard-pressed to understand - I mean in the absence of - in the absence of authority demonstrating that someone in whose favor an injunction has been issued is entitled to take discovery to see if someone is subject to that injunction. In the absence of such authority, I'm still hard-pressed to see how you get topics 5 and 6.

MR. SEMMELMAN: Let me start by responding to the authority point. And the closest authority we have is the Second Circuit Louis Vuitton case which we've cited in various papers, not in the joint letter that came in but in earlier filings with the Court including our cross-motion -

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THE COURT: (inaudible) what that case says.

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MR. SEMMELMAN: I'm sorry?

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THE COURT: Tell me what that case says.

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MR. SEMMELMAN: Okay, that was a case involving

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counterfeit handbags, and the district court in the

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Southern District had issued an injunction --

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THE COURT: Was it against named defendants?

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MR. SEMMELMAN: There were named defendants,

10 yes.

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THE COURT: Okay, go ahead.

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MR. SEMMELMAN: Had issued an injunction against

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the sale of counterfeit handbags, and then an employee of

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the plaintiff went into another store and saw the

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counterfeit handbags being sold in another store, and a

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check of the records in the county clerk's office saw that

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there was overlap in the ownership of this second store

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with the ownership of the enjoined entity. It was not

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identical, but there were overlapping owners. And the

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plaintiff sought to enforce the injunction against this

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second store.

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The district court did not hold an evidentiary

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hearing but denied the injunction, the extension of the

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injunction on various grounds. The Second Circuit reversed

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and said an evidentiary hearing should've been held to

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determine the facts.

Now, that's not a discovery case, but it is a case involving taking of evidence and in order to ascertain whether somebody who was not originally named in the injunction is nevertheless bound by it to determine if the person is in active concert or participation with the named parties.

So that really is part of the basis on which we argued in our cross-motion. We asked the judge for an evidentiary hearing, which at least as of now we haven't had, although I assume, if we come back with some evidence and request one, presumably we would get one, but we're not there yet. But in aid of the evidentiary hearing we said we would ask for expedited discovery because there is case law, not necessarily in this precise context, but, generally speaking, there's case law that when you have a preliminary injunction hearing, courts will often grant expedited discovery in aid of that hearing.

So we ask for the taking of evidence so that we could establish that Respublika is in active concert or participation with the hackers.

THE COURT: Well, no, but that - you still then bump up against the principle that you don't get discovery to see if you have a claim until you've stated a claim.

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MR. SEMMELMAN: But --

THE COURT: You haven't stated a claim against Respublika yet.

MR. SEMMELMAN: But I come back to we're taking it to see if they're in active concert or participation --

THE COURT: Yeah, but that seems to be a distinction without a difference to me. I mean if you find out they are in active participation, you're going to assert a claim against them as sure as God made green apples.

MR. SEMMELMAN: Well, it may well be if we get the evidence, well, we'll see what we do with it, but right now our objective is more basic. Our objective is more basic. It's to develop evidence to see if they're in active concert or participation with the hackers and, therefore, bound by the preliminary injunction as in the Louis Vuitton case that I described. That's our motivation. I don't know what the evidence is going to show. I don't know whether it'll point us in the direction of saying they are now to be rendered a party or they are merely in active concert or participation with the hackers. I just don't know.

But I think that we're trying to forecast things that may materialize, things that may not materialize, and

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2 I come back to what I was saying before, if we take the
3 deposition, ask the questions, we'll see where we are.
4 We'll see where we are. We'll have the record.

5 THE COURT: All right.

6 MR. ROSENFELD: May I respond to that, Your
7 Honor?

8 THE COURT: Go ahead.

9 MR. ROSENFELD: The Louis Vuitton case doesn't
10 control here for three reasons. First of all, as Your
11 Honor points out, the distinction between named defendants
12 and non-parties, Respublika's a non-party, there's no claim
13 against it. Second of all, there was not a media defendant
14 in that case, and so you don't have the First Amendment
15 concerns that the Court's already acknowledged here on one
16 side of the scale.

17 And, third of all, the details that go to
18 oppression and undue burden are also case specific, and
19 they're much more pronounced here than they are in that
20 case given the history of oppression here that we've
21 detailed in our papers.

22 THE COURT: Well, you know, on that score
23 there's really no affidavit setting forth an evidentiary
24 basis to conclude that there's oppression.

25 MR. ROSENFELD: There is a submission that we've

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2 made to the courts, a lawyer affidavit submitting materials
3 that we asserted in our underlying brief to Judge Ramos,
4 the Court can take judicial notice of, and we cited --

5 THE COURT: What does that affidavit say? Do
6 you happen to have a copy of it with it?

7 MR. ROSENFELD: No, I don't have it with me,
8 Your Honor.

9 THE COURT: Okay, tell me what it says.

10 MR. ROSENFELD: So it was the - it was my
11 affidavit in support of our motion to clarify, attaching
12 all of - it just attaches all of the human rights reports
13 and congressional testimony and things of that nature about
14 the history of oppression by Kazakhstan of the media and of
15 Respublika in particular. And we asserted in the first --

16 THE COURT: There's a lot of hearsay. There's
17 no affidavit from somebody who was --

18 MR. ROSENFELD: There is none.

19 THE COURT: -- the actual victim of oppression
20 or --

21 MR. ROSENFELD: That's correct.

22 THE COURT: -- no affidavit from somebody at
23 Respublika who's said people are calling him and hanging up
24 or engaging in other sort of questionable conduct.

25 MR. ROSENFELD: That's correct, and our

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2 assertion was, and I think it was in the first footnote of
3 our brief on the motion to clarify that the Court can take
4 judicial notice under Rule 201 of those materials, and we
5 cited a couple of cases in which the court has taken --

6 THE COURT: I don't think newspaper articles are
7 judicially noticeable, except for the fact that --

8 MR. ROSENFELD: These are not newspaper
9 articles.

10 THE COURT: -- except for the fact that they
11 were published.

12 MR. ROSENFELD: They're not newspaper articles,
13 and we're talking - I wish I had it here, Your Honor, but I
14 submitted it, we included it as exhibit, as the second
15 exhibit the joint letter. I'm sorry, we included our brief
16 not the --

17 THE COURT: Even congressional testimony, I mean
18 testimony before Congress is just one person's statement.
19 It's not information of unquestionable accuracy like the
20 periodic table.

21 MR. ROSENFELD: Right.

22 THE COURT: So I don't know how testimony before
23 Congress is judicially noticeable except for the fact that
24 it was given. But the content is hearsay.

25 MR. ROSENFELD: Even if we have a hearsay

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2 problem on that, Your Honor, we have the first two of the
3 three reasons which I already said. Your Honor pointed out
4 the distinction the defendants and non-defendants, and the
5 First Amendment issues which are here but which were not in
6 the Louis Vuitton case. I mean simply put, going to London
7 and taking this deposition to see what happens, knowing, as
8 Your Honor's pointed out, that we're gonna come back, we're
9 gonna have a lot of disagreements. We've already put them
10 down on paper, and we're gonna come back with a very thin
11 transcript is extraordinarily burdensome and wasteful and
12 it's inappropriate based on the First Amendment arguments
13 we've made. So we would object for all the reasons we've
14 set forth to be going there and seeing what they can find
15 in this situation.

16 THE COURT: All right. No one is asserting
17 financial hardship here, is that right?

18 MR. ROSENFELD: We haven't made that objection.

19 THE COURT: Okay. Can you give me any examples
20 of acts of oppression that have been perpetrated against
21 Respublika or its staff?

22 MR. ROSENFELD: Yes. When Respublika existed as
23 a newspaper within Kazakhstan, there were threats made
24 against them. The --

25 THE COURT: Threats of what?

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2 MR. ROSENFELD: Threats made against them of
3 (indiscernible) articles critical of the government. They
4 put - specifically they - a decapitated dog's body was put
5 on their front gate with a note that said, "There will be
6 no next time." And then I think the next --

7 THE COURT: Is there - all right, and the
8 assumption is that it was done by someone at the
9 government?

10 MR. ROSENFELD: Yes, that is our assumption.
11 The next day --

12 THE COURT: The dog's body was put on, was
13 located, was put where?

14 MR. ROSENFELD: Was put on the front gate, as I
15 understand it. The next date, for whatever reason --

16 THE COURT: Front gate of what?

17 MR. ROSENFELD: The offices of Respublika.

18 THE COURT: Uh huh, okay, go ahead.

19 MR. ROSENFELD: The next day they put the dog's
20 head on the front gate with another threatening note.
21 After that the offices were fire-bombed, Your Honor, and
22 ultimately fearing for their life, the principals of
23 Respublika fled the country. So these are not imagined
24 threats. We haven't been in a position where we've had to
25 prove that these came from Kazakhstan, but those are the

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2 reasons they left the country and those are things that
3 have been looked at, as I said, by these congressional
4 committees and human rights group and roundly criticized.

5 THE COURT: When did this conduct occur?
6 Approximately. I'm not looking for a precise date. A year
7 ago, was it ten years ago, was it five years ago?

8 MR. ROSENFELD: I think it was a - I think it
9 was - hold on one second, Your Honor. My best recollection
10 is it was a few to five years ago, but I'd have to confirm
11 those facts. I don't have them in front of me. And they -
12 I don't know when they fled and have been out of the
13 country operating on the internet. We made, you know, I
14 have my affidavit which I mentioned with a lot of materials
15 on this in the record, but I just don't have those facts at
16 my fingertips right now.

17 MR. SEMMELMAN: Your Honor, may I respond to
18 what I just heard?

19 THE COURT: Go ahead.

20 MR. SEMMELMAN: I have no knowledge of any of
21 these tales having to do with dogs being decapitated or
22 anything like that, although I read that in the
23 unsubstantiated submission of counsel, and Mr. Rosenfeld
24 himself has said the assumption is that the Government of
25 Kazakhstan was behind that. Well, that's not proof, that's

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not evidence. I have no idea what happened, I have no idea
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THE COURT: I mean if this happened shortly
after an article critical of the government, which is what
I thought Mr. Rosenfeld was suggesting, I mean there's an
inference there that can be drawn. Nobody here was born
last night and --

MR. SEMMELMAN: Well, look, all I can say is I
don't know what happened, but there's evidence, there's no
evidentiary proof that would be normally admitted in a
courtroom that says the Government of Kazakhstan had
anything to do with this, assuming it actually happened,
and I have no knowledge of that. But assuming some version
of this actually happened, where's the proof that the
Government of Kazakhstan was behind it? And moving beyond
that, what does that have to do with taking a deposition in
London?

We're introducing or Mr. Rosenfeld is introducing
inflammatory allegations without proof and saying, well,
because of this we shouldn't have a deposition in London.
Well, deposition in London has nothing to do with anything
that he's talking about. We're here in a U.S. federal
court, we're gonna take a deposition under the ultimate
oversight of Your Honor. There'll be a transcript of

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2 everything that happens. We plan to videotape so there'll
3 be a videotape of everything that happens. So what are we
4 talking about here? What Mr. Rosenfeld is describing, even
5 if he could prove it up, which he hasn't done, but even if
6 he could, what does that have to do with taking a
7 deposition?

8 THE COURT: All right. All right, look, after
9 hearing everybody - Respublika's status right now is a non-
10 party. It's not named in the complaint and we know from
11 Judge Ramos' decision of last evening that it's not subject
12 to the injunction on the current record. So it's a non-
13 party at this point. It's not someone subject to the
14 injunction. So it can be deposed as a non-party witness.
15 In footnote 1 of the joint letter dated October 26,
16 Respublika states it doesn't contend that the court lacks
17 jurisdiction over it, and it probably couldn't in light of
18 the fact that it affirmatively sought relief in this court.

19 I think it is appropriate that Respublika be
20 deposed as a non-party witness with respect to the claims
21 asserts in the complaint. And I also think that - look, I
22 mean everyone here is going into this with their eyes open.
23 I also think that an oral deposition is probably most
24 appropriate. The written depositions are sometimes
25 appropriate, but they're a poor substitute for an oral

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2 deposition. As I indicated in my questioning, the answers
3 to a written deposition on written questions, the answers
4 are usually crafted by lawyers. I'm not talking about what
5 anybody would do here, but frequently when lawyers draft
6 answers to written questions, their goal is to obscure and
7 hide as much information as possible as opposed to
8 disclosing information. So I don't think the written - and
9 also you can't ask follow-up questions, so also I don't
10 think - so I don't the deposition on written questions is
11 really an adequate substitute.

12 With respect to the topics that can be asked
13 about at the deposition, number 4 is withdrawn, and I'm
14 hard-pressed to see how 5 and 6 are appropriate. As I
15 indicated before, there is voluminous case law, it's cited
16 in my earlier opinion in Bridgewater against Taylor, 745 F.
17 Supp. 2d 355. It's also discussed by Judge Lynch when he
18 was in the district court in the Podany case at 350 F.
19 Supp. 2d 375. There's voluminous authority that a party is
20 not entitled to take discovery to see if it has a claim
21 against another party until, that you've got to state a
22 claim before you get discovery to see if you have a claim.
23 I don't see how topics 5 and 6 of the 30(b)(6) relate to
24 the allegations in the complaint that was filed in this
25 case on March 12 of this year.

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2 But this is what I'm gonna do. Do you have a
3 timetable for when you're going to be going to London or -
4 have you talked about potential dates?

5 MR. SEMMELMAN: We have not identified specific
6 dates, but we have indicated that we will be very flexible,
7 and we will pick a date that is convenient for everybody.

8 THE COURT: Well, is there a window - let me
9 tell you why I ask the question. I want to give you a
10 chance to submit - if you have authority that justifies 5
11 and 6, I'd like to get that authority before you go to
12 London, and I want to give you an opportunity to submit any
13 authority you have justifying topics 5 and 6. And I want
14 to set a timetable for that. So that's why asking if
15 you've got a window of time you're looking at for your trip
16 to London.

17 MR. SEMMELMAN: There's no specific window, so
18 whatever timetable the Court suggests for the written
19 submission on 5 and 6 will be fine.

20 THE COURT: All right. Can you make - Mr.
21 Semmelman, can you make your submission by a week from
22 today and, Mr. Rosenfeld, can you submit a response by a
23 week after that?

24 MR. ROSENFELD: That's fine with us, Your Honor.

25 THE COURT: Does that work both of you?

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MR. SEMMELMAN: Yes, Your Honor.

THE COURT: And your submission's actually going to be due on the 12th, Mr. Rosenfeld, because the 11th is still observed as a court holiday. It's Veteran's Day or Armistice Day. Okay? All right. Yeah, so I think topics 1, 2, and 3, 7 and 8 are permissible; 4 is withdrawn; and I'll get a submission on justifying 5 and 6. It's conduct that post-dates the complaint, so I'm not sure - I'm really hard-pressed to see how it's relevant to the complaint. It seems like it's more geared to determining whether the plaintiff has a claim against Respublika which the cases indicate you don't get until you state a claim.

All right. Mr. Rosenfeld, anything else we should be considering today from your point of view?

MR. ROSENFELD: No, Your Honor.

THE COURT: Okay, Mr. Semmelman?

MR. SEMMELMAN: No. Thank you very much, Your Honor.

THE COURT: All right, thank you all.

MR. ROSENFELD: Thank --

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, The Republic of Kazakhstan v. Does 1-100, Docket #15cv1900, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: October 30, 2015